



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG-2012-0403]

RIN 1625-AA08

Special Local Regulations; Annual Bayview Mackinac Race

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish permanent Special Local Regulations to provide for the safe control of vessel movement during the start of the Annual Bayview Mackinac Race, commonly known as the Port Huron to Mackinac Sail Race. This action is necessary to provide for the safety of the general boating public and commercial shipping during the start of the race.

DATES: Comments and related materials must be received by the Coast Guard no later than [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2012-0403 using any one of the following methods:

(1) Federal eRulemaking Portal:

<http://www.regulations.gov>.

(2) Fax: 202-493-2251.

Mail or Delivery: Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590-0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these methods. See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, e-mail or call Frank Jennings, Jr., Auxiliary and Boating Safety Branch, Ninth Coast Guard District, 1240 East 9th Street, Cleveland, OH, via e-mail at: frank.t.jennings@uscg.mil or by phone at: (216) 902-6094. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to

<http://www.regulations.gov> and will include any personal

information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at <http://www.regulations.gov>, or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on "Submit a Comment" on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached

the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified

under ADDRESSES. Please, explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the Federal Register.

Background and Purpose

The Port Huron to Mackinac sail race (currently titled the "Bell's Beer Bayview Mackinac Race") is an annual regatta that has taken place since 1925. The race occurs in July of each year with a starting point in Port Huron, MI. It is typical for more than 200 sailboats to take part in this annual event. The Coast Guard's Ninth District Commander has determined that the high concentration of participants and spectators at the race's starting point poses extra and unusual hazards to the boating public. The likely combination of recreational vessels and sailing vessels gathered together in high concentrations within a congested area known to have fast currents could lead to serious boating injuries or fatalities.

Discussion of Rule

In light of the extra and unusual hazards likely to occur at the starting point of the Port Huron to Mackinac sail race, the Coast Guard proposes to establish permanent Special Local Regulations. These Special Local Regulations will be enforced in July of each year, and the exact times and dates of enforcement will be published in the Federal Register annually

via a Notice of Enforcement. This proposed Special Local Regulation will apply to the starting area of the race in the vicinity of Port Huron, MI. Specifically, this proposed regulated area will include all U.S. navigable waters of the Black River, St. Clair River and lower Lake Huron starting at: latitude 042°58'47" N, longitude 082°26'0" W; then easterly to latitude 042°58'24" N, longitude 082°24'47" W; then northward along the International Boundary to latitude 043°2'48" N, longitude 082°23'47" W; then westerly to the shoreline at approximate location latitude 043°2'48" N, longitude 082°26'48" W; then southward along the U.S. shoreline to latitude 042°58'54" N, longitude 082°26'1" W; then back to the beginning [DATUM: NAD 83].

In order to ensure the safety of spectators and those vessels participating in the race, the Coast Guard will patrol the regulated area under the direction of a designated Coast Guard Patrol Commander (PATCOM). Vessels desiring to transit the regulated area may do so but only with prior approval of the PATCOM and only when so directed by that individual. The PATCOM may be contacted on Channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander." Vessels allowed within the regulated area will be operated at a no wake speed and in a manner that will not endanger participants in the event or any other craft. These proposed Special Local Regulations shall not

apply to vessels participating in the event or government vessels patrolling the regulated area.

In the event these proposed Special Local Regulations affects shipping, commercial vessels may request permission from the PATCOM to transit the area of the event by hailing call sign "Coast Guard Patrol Commander" on Channel 16 (156.8 MHZ).

Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes or executive orders.

Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

This proposed rule is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS) because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies,

will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues.

This proposed rule will be enforced for only seven hours on a single day in July of each. Also, the regulated area will be a relatively small and only in effect at the race's starting point. Additionally, it is expected that during the annual enforcement of these proposed Special Local Regulations the majority of vessel traffic in the vicinity of the regulated area will be recreational in nature. Furthermore, some vessel traffic will be allowed to pass, albeit with caution and at a reduced speed, through the regulated area with the permission of the Coast Guard Patrol Commander. Finally, the Coast Guard expects that public awareness of this event, along with the Coast Guard's regulation of it, is particularly high. As mentioned above, this race has recurred regularly since 1925, and the Coast Guard has regulated it for many years with both permanent and temporary regulations. Despite the race's long history, the Coast Guard still intends to issue maritime advisories to current users of the affected waterways. On the whole, local maritime interests are already well familiar with the effects of this event and this proposed rulemaking.

Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this proposed rule would have a

significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the Black River, St. Clair River and lower Lake Huron during the month of July each year.

These proposed Special Local Regulations will not have a significant economic impact on a substantial number of small entities for the same reasons discussed in above Regulatory Planning and Review section.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking process. If this proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please e-mail or call Frank Jennings, Jr., Auxiliary and Boating Safety Branch, Ninth Coast Guard District, 1240 East 9th Street, Cleveland, OH, via e-mail at: frank.t.jennings@uscg.mil or by phone at: (216) 902-6094. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This proposed rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this

proposed rule under that Order and determined that this rule does not have implications for federalism.

Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "For Further Information Contact" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule will not result in such an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

Taking of Private Property

This proposed rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule will meet applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not an economically significant rule and will not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

This proposed rule is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

Technical Standards

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f). We have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves the establishment of Special Local Regulations and is therefore categorically excluded under figure 2-1, paragraph (34)(h), of the Instruction. During the annual permitting process for this event an environmental analysis will be conducted to include the effects of these proposed Special Local Regulations. Thus, no preliminary environmental analysis checklist or Categorical Exclusion Determination (CED) are required for this proposed rulemaking action. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water), reporting and record keeping requirements, waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Part 100 as follows:

PART 100 - SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233

2. Add § 100.902 to read as follows:

§ 100.902 Special Local Regulations; Annual Bayview Mackinac Race.

(a) Regulated Area. These Special Local Regulations apply to all U.S. navigable waters of the Black River, St. Clair River, and lower Lake Huron, bound by a line starting at latitude 042°58'47" N, longitude 082°26'0" W; then easterly to latitude 042°58'24" N, longitude 082°24'47" W; then northward along the International Boundary to latitude 043°2'48" N, longitude 082°23'47" W; then westerly to the shoreline at approximate location latitude 043°2'48" N, longitude 082°26'48" W; then southward along the U.S. shoreline to latitude 042°58'54" N, longitude 082°26'1" W; then back to the beginning [DATUM: NAD 83].

(b) Enforcement period. These Special Local Regulations will be enforced annually at the commencement of the Bayview Mackinac Race. The enforcement period will last approximately seven hours on a single day each July. The Coast Guard will notify the public of the exact enforcement date and times via a Notice of Enforcement published in the Federal Register. Also, the Coast Guard may use marine broadcasts, local notice to mariners, local news media, on-scene oral notice, and broadcasts on VHF-FM marine radio Channel 16 (156.8 MHZ) to notify the public of the exact dates and times of enforcement.

(c) Special Local Regulations.

(1) No vessel may enter the regulated area established in paragraph (a) without prior approval from the Coast Guard's designated Patrol Commander (PATCOM). The PATCOM may restrict vessel operation within the regulated area to vessels having particular operating characteristics.

(2) Vessels permitted to enter this regulated area must operate at a no wake speed and in a manner that will not endanger race participants or any other craft.

(3) The PATCOM may direct the anchoring, mooring, or movement of any vessel within this regulated area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the PATCOM shall

serve as a signal to stop. Vessels so signaled shall stop and shall comply with the orders of the PATCOM. Failure to do so may result in expulsion from the area, a Notice of Violation for failure to comply, or both.

(4) If it is deemed necessary for the protection of life and property, the PATCOM may terminate at any time the marine event or the operation of any vessel within the regulated area.

(5) In accordance with the general regulations in section 100.35 of this part, the Coast Guard will patrol the regatta area under the direction of a designated Coast Guard Patrol Commander (PATCOM). The PATCOM may be contacted on Channel 16 (156.8 MHz) by the call sign "Coast Guard Patrol Commander."

(6) The rules in this section shall not apply to vessels participating in the event or to government vessels patrolling the regulated area in the performance of their assigned duties.

DATED: May 4, 2012

J. R. BINGAMAN
Captain, U.S. Coast Guard
Acting Commander, Ninth Coast Guard District

[FR Doc. 2012-11679 Filed 05/14/2012 at 8:45 am; Publication Date: 05/15/2012]